

SENATE BILL NO. 293

INTRODUCED BY BLACK, ARNTZEN, BERGREN, BUTCHER, DICKENSON, FRANKLIN, FUREY,
GUTSCHE, HANSEN, HARRIS, HENRY, HINER, KITZENBERG, LINDEEN, MATTHEWS, MUSGROVE,
PARKER, ROUSH, SESSO, STAHL, TESTER, WINDHAM, WITT, L. JONES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO ALTERNATIVE FUELS AND
PETROLEUM PRODUCTS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT
STANDARDS AND SPECIFICATIONS ENSURING THAT ALL CERTAIN TYPES OF GASOLINE SOLD TO
CONSUMERS FOR USE IN MOTOR VEHICLES TO BE OPERATED ON PUBLIC ROADS IS BLENDED WITH
ETHANOL AND PROVIDING THAT THE GASOLINE MAY NOT CONTAIN MORE THAN TRACE ~~AMOUNTS~~
LEVELS OF MTBE; METHYL TERTIARY BUTYL ETHER; REDUCING THE TAX INCENTIVE FROM 30 CENTS
TO 20 CENTS PER GALLON; REVISING THE TIME IN WHICH TAX CREDITS MAY BE PAID; REDUCING THE
AMOUNT OF PAYMENTS THAT MAY BE MADE TO AN ALCOHOL DISTRIBUTOR IN A CALENDAR YEAR
FROM \$3 MILLION TO \$2 MILLION; PROVIDING FOR CONTRACTS FOR ETHANOL PRODUCERS ELIGIBLE
FOR TAX INCENTIVES; REQUIRING AN ETHANOL PRODUCER TO USE AT LEAST A CERTAIN
PERCENTAGE OF MONTANA PRODUCT IN ITS TOTAL PRODUCTION TO QUALIFY FOR THE TAX
INCENTIVE; PROVIDING THAT AN ETHANOL FACILITY IS NOT ELIGIBLE FOR THE TAX INCENTIVE
UNLESS THE FACILITY PAID A PREVAILING RATE OF WAGES DURING CONSTRUCTION; REVISING
REQUIREMENTS FOR BUSINESS PLANS; REMOVING THE REQUIREMENT FOR LOSS OF PRIORITY;
REVISING THE CONDITIONS FOR AN IN-STATE INVESTMENT FOR ALCOHOL PRODUCTION TO BE USED
FOR FUEL; ALLOWING THE PAYMENT OF DIVIDENDS AND BONUSES UNDER CERTAIN CONDITIONS;
CREATING CERTAIN EXCEPTIONS TO THE REQUIREMENT TO USE ETHANOL-BLENDED GASOLINE;
REVISING THE CONTINGENCIES ELIMINATING THE PROVISIONS TAXING GASOHOL ~~AND BIODIESEL~~
AT 85 PERCENT OF THE GASOLINE LICENSE TAX AND SPECIAL FUEL TAX RATES; PROVIDING FOR
ENFORCEMENT BY THE DEPARTMENT OF LABOR AND INDUSTRY AND THE DEPARTMENT OF
ENVIRONMENTAL QUALITY; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES
ESTABLISHING ALLOWABLE TRACE LEVELS OF METHYL TERTIARY BUTYL ETHER AND ESTABLISHING
REPORTING AND SAMPLING REQUIREMENTS; AMENDING SECTIONS 15-70-201, 15-70-204, 15-70-503,
15-70-522, 17-6-317, 82-15-101, 82-15-102, 82-15-103, 82-15-104, 82-15-106, AND 82-15-110, AND 82-15-111,
MCA, AND SECTIONS 12 AND 13, CHAPTER 568, LAWS OF 2001; REPEALING SECTION 43, CHAPTER 568;

1 ~~LAWS OF 2004 15-70-245, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND TERMINATION~~
 2 ~~DATES."~~

3

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5

6 NEW SECTION. Section 1. Required use of gasoline blended with ethanol. (1) ~~Within~~ EXCEPT AS
 7 PROVIDED IN [SECTION 2] AND SUBSECTION (5) OF THIS SECTION, WITHIN 12 months after the department OF
 8 TRANSPORTATION has certified that ~~30 million gallons of denatured ethanol have been produced in the state of~~
 9 ~~Montana~~ THE STATE OF MONTANA HAS A PRODUCTION CAPACITY OF PRODUCED 30 55 40 MILLION GALLONS OF
 10 DENATURED ETHANOL AND HAS MAINTAINED THAT LEVEL OF PRODUCTION ON AN ANNUALIZED BASIS FOR AT LEAST 3
 11 MONTHS, the department shall adopt standards and specifications pursuant to 82-15-103 that ensure that all
 12 gasoline sold to consumers for use in motor vehicles to be operated on the public highways, roads, and streets
 13 of this state must be blended with 10%, by volume, of agriculturally derived, denatured ethanol and may not
 14 contain more than trace amounts of the additive ~~commonly known as MTBE (methyl tertiary butyl ether).~~

15 (2) Except as provided in [section 2] AND SUBSECTION (5) OF THIS SECTION, 12 months after the
 16 department OF TRANSPORTATION has certified that ~~30 million gallons of denatured ethanol have been produced~~
 17 ~~in the state of Montana~~ THE STATE OF MONTANA HAS A PRODUCTION CAPACITY OF PRODUCED 30 55 40 MILLION
 18 GALLONS OF DENATURED ETHANOL AND HAS MAINTAINED THAT LEVEL OF PRODUCTION ON AN ANNUALIZED BASIS FOR AT
 19 LEAST 3 MONTHS, a fuel retailer who sells gasoline to consumers to be used in their vehicles on the public
 20 highways, roads, and streets of this state may not accept gasoline for sale to consumers or sell gasoline to
 21 consumers that is not ethanol-blended as provided in subsection (1) or that contains the additive ~~MTBE~~ METHYL
 22 TERTIARY BUTYL ETHER.

23 (3) Agriculturally denatured ethanol referred to in subsection (1) may be denatured only as specified
 24 in Title 27, parts 20 and 21, of the Code of Federal Regulations.

25 (4) THE DEPARTMENT OF TRANSPORTATION SHALL COMPILE A QUARTERLY REPORT CERTIFYING THE AMOUNT
 26 OF DENATURED ETHANOL THAT IS PRODUCED IN MONTANA.

27 (5) ONCE THE PRODUCTION OF 55 40 MILLION GALLONS OF DENATURED ETHANOL HAS BEEN CERTIFIED AND THE
 28 PROVISIONS OF SUBSECTIONS (1) AND (2) APPLY, IF THE PRODUCTION OF DENATURED ETHANOL DROPS BELOW 30 20
 29 MILLION GALLONS ON AN ANNUALIZED BASIS, THE PROVISIONS OF THIS SECTION DO NOT APPLY.

30

1 NEW SECTION. Section 2. Exemptions from use of ethanol-blended gasoline. (1) Gasoline that
 2 is not ethanol-blended as required in [section 1] may be sold or dispensed at a public or private racecourse if
 3 the gasoline is intended to be used exclusively as a fuel for off-highway motor sports racing events.

4 ~~(2) A gasoline retailer OR A WHOLESALE BULK DISTRIBUTOR may sell or offer for sale nonethanol-blended~~
 5 ~~gasoline for use in collector vehicles, vehicles eligible to be licensed as collector vehicles, off-road vehicles,~~
 6 ~~motorcycles, boats, airplanes authorized to use gasoline, snowmobiles, or small engines. GASOLINE RETAILERS~~
 7 ~~AND WHOLESALE BULK DISTRIBUTORS ARE ENCOURAGED TO MAY SHALL HOLD, STORE, IMPORT, TRANSFER, AND OFFER~~
 8 ~~FOR SALE OR USE NONETHANOL-BLENDED UNLEADED PREMIUM GRADE GASOLINE WITH AN ANTIKNOCK INDEX NUMBER OF~~
 9 ~~91 OR GREATER.~~

10 (3) AVIATION FUEL IS NOT SUBJECT TO AN ETHANOL BLENDING REQUIREMENT.

11

12 **SECTION 3. SECTION 15-70-201, MCA, IS AMENDED TO READ:**

13 **"15-70-201. (Temporary) Definitions.** As used in this part, unless the context requires otherwise, the
 14 following definitions apply:

15 ~~———— (1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the~~
 16 ~~business of farming or ranching and who files farm income reports for tax purposes as required by the United~~
 17 ~~States internal revenue service.~~

18 ~~———— (2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either~~
 19 ~~from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in~~
 20 ~~this section.~~

21 ~~———— (3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be~~
 22 ~~known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline~~
 23 ~~or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its~~
 24 ~~military forces in aircraft.~~

25 ~~———— (4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline~~
 26 ~~delivered into the supply tank of a motor vehicle.~~

27 ~~———— (5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal~~
 28 ~~storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to~~
 29 ~~another refinery or pipeline terminal in this state for:~~

30 ~~———— (i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;~~

- 1 ~~—— (ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or~~
2 ~~—— (iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.~~
3 ~~—— (b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a~~
4 ~~person who is the holder of a valid distributor's license.~~
5 ~~—— (c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or~~
6 ~~pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this~~
7 ~~state.~~
8 ~~—— (6) "Distributor" means:~~
9 ~~—— (a) a person who engages in the business in this state of producing, refining, manufacturing, or~~
10 ~~compounding gasoline for sale, use, or distribution;~~
11 ~~—— (b) a person who imports gasoline for sale, use, or distribution;~~
12 ~~—— (c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become~~
13 ~~licensed to assume the Montana state gasoline tax liability;~~
14 ~~—— (d) an exporter as defined in subsection (8);~~
15 ~~—— (e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or~~
16 ~~—— (f) a person in Montana who blends alcohol with gasoline.~~
17 ~~—— (7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a~~
18 ~~motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.~~
19 ~~—— (8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle,~~
20 ~~gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use,~~
21 ~~or consumption beyond the boundaries of this state.~~
22 ~~—— (9) (a) "Gasoline" includes:~~
23 ~~—— (i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline,~~
24 ~~natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons~~
25 ~~expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion~~
26 ~~engines; and~~
27 ~~—— (ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the~~
28 ~~additive's classifications or uses.~~
29 ~~—— (b) Gasoline does not include special fuels as defined in 15-70-301.~~
30 ~~—— (10) "Import" means to receive into a person's possession or custody first after its arrival and coming~~

1 ~~to rest at destination within the state of gasoline shipped or transported into this state from a point of origin~~
 2 ~~outside of this state other than in the fuel supply tank of a motor vehicle.~~

3 ~~———(11) "Importer" means a person who transports or arranges for the transportation of gasoline into~~
 4 ~~Montana for sale, use, or distribution in this state.~~

5 ~~———(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:~~

6 ~~———(a) is consigned to a Montana destination and imported into the state without the distributor first having~~
 7 ~~obtained a Montana gasoline distributor license as required in 15-70-202; or~~

8 ~~———(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title~~
 9 ~~15, chapter 70.~~

10 ~~———(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this~~
 11 ~~state in whole or in part by the combustion of gasoline.~~

12 ~~———(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.~~

13 ~~———(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of~~
 14 ~~any political subdivision of the state.~~

15 **15-70-201. (Effective on occurrence of contingency) Definitions.** As used in this part, unless the
 16 context requires otherwise, the following definitions apply:

17 (1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the
 18 business of farming or ranching and who files farm income reports for tax purposes as required by the United
 19 States internal revenue service.

20 (2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either
 21 from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in
 22 this section.

23 (3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be
 24 known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline
 25 or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its
 26 military forces in aircraft.

27 (4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline
 28 delivered into the supply tank of a motor vehicle.

29 (5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal
 30 storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to

1 another refinery or pipeline terminal in this state for:

2 (i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;

3 (ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or

4 (iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

5 (b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a
6 person who is the holder of a valid distributor's license.

7 (c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or
8 pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this
9 state.

10 (6) "Distributor" means:

11 (a) a person who engages in the business in this state of producing, refining, manufacturing, or
12 compounding gasoline for sale, use, or distribution;

13 (b) a person who imports gasoline for sale, use, or distribution;

14 (c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become
15 licensed to assume the Montana state gasoline tax liability;

16 (d) an exporter as defined in subsection (8);

17 (e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

18 (f) a person in Montana who blends alcohol with gasoline.

19 (7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a
20 motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

21 (8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle,
22 gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use,
23 or consumption beyond the boundaries of this state.

24 (9) "Gasohol" means ~~a fuel blend containing at least 10% alcohol, with the balance being gasoline and~~
25 ~~other additives. Gasohol is also known as "E-10"~~ a gasoline fuel that is blended with denatured ethanol.
26 Typically gasohol is a blend of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ.
27 The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend
28 that is 10% denatured ethanol and 90% gasoline would be reflected as E-10.

29 (10) (a) "Gasoline" includes:

30 (i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead

1 gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected
 2 hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating
 3 internal combustion engines; and

4 (ii) except for alcohol blended into gasohol, any other type of additive when the additive is mixed or
 5 blended into gasoline, regardless of the additive's classifications or uses.

6 (b) Gasoline does not include special fuels as defined in 15-70-301.

7 (11) "Import" means to receive into a person's possession or custody first after its arrival and coming
 8 to rest at destination within the state of gasoline shipped or transported into this state from a point of origin
 9 outside of this state other than in the fuel supply tank of a motor vehicle.

10 (12) "Importer" means a person who transports or arranges for the transportation of gasoline into
 11 Montana for sale, use, or distribution in this state.

12 (13) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (10)
 13 that:

14 (a) is consigned to a Montana destination and imported into the state without the distributor first having
 15 obtained a Montana gasoline distributor license as required in 15-70-202; or

16 (b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title
 17 15, chapter 70.

18 (14) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this
 19 state in whole or in part by the combustion of gasoline.

20 (15) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

21 (16) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of
 22 any political subdivision of the state. (~~Terminates June 30 of fourth year following date of occurrence of~~
 23 ~~contingency--sec. 13, Ch. 568, L. 2001.~~)

24 ~~15-70-201. (Effective July 1 of fourth year following date of occurrence of contingency)~~

25 ~~Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:~~

26 ~~(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the~~
 27 ~~business of farming or ranching and who files farm income reports for tax purposes as required by the United~~
 28 ~~States internal revenue service.~~

29 ~~(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either~~
 30 ~~from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in~~

1 this section:

2 ~~——— (3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be~~
 3 ~~known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline~~
 4 ~~or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its~~
 5 ~~military forces in aircraft.~~

6 ~~——— (4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline~~
 7 ~~delivered into the supply tank of a motor vehicle.~~

8 ~~——— (5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal~~
 9 ~~storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to~~
 10 ~~another refinery or pipeline terminal in this state for:~~

11 ~~——— (i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;~~

12 ~~——— (ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or~~

13 ~~——— (iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.~~

14 ~~——— (b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a~~
 15 ~~person who is the holder of a valid distributor's license.~~

16 ~~——— (c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or~~
 17 ~~pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this~~
 18 ~~state.~~

19 ~~——— (6) "Distributor" means:~~

20 ~~——— (a) a person who engages in the business in this state of producing, refining, manufacturing, or~~
 21 ~~compounding gasoline for sale, use, or distribution;~~

22 ~~——— (b) a person who imports gasoline for sale, use, or distribution;~~

23 ~~——— (c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become~~
 24 ~~licensed to assume the Montana state gasoline tax liability;~~

25 ~~——— (d) an exporter as defined in subsection (8);~~

26 ~~——— (e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or~~

27 ~~——— (f) a person in Montana who blends alcohol with gasoline.~~

28 ~~——— (7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a~~
 29 ~~motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.~~

30 ~~——— (8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle,~~

1 gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use,
2 or consumption beyond the boundaries of this state:

3 ~~———— (9) (a) "Gasoline" includes:~~

4 ~~———— (i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline,
5 natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons
6 expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion
7 engines; and~~

8 ~~———— (ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the
9 additive's classifications or uses:~~

10 ~~———— (b) Gasoline does not include special fuels as defined in 15-70-301.~~

11 ~~———— (10) "Import" means to receive into a person's possession or custody first after its arrival and coming
12 to rest at destination within the state of gasoline shipped or transported into this state from a point of origin
13 outside of this state other than in the fuel supply tank of a motor vehicle.~~

14 ~~———— (11) "Importer" means a person who transports or arranges for the transportation of gasoline into
15 Montana for sale, use, or distribution in this state:~~

16 ~~———— (12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:~~

17 ~~———— (a) is consigned to a Montana destination and imported into the state without the distributor first having
18 obtained a Montana gasoline distributor license as required in 15-70-202; or~~

19 ~~———— (b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title
20 15, chapter 70:~~

21 ~~———— (13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this
22 state in whole or in part by the combustion of gasoline:~~

23 ~~———— (14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.~~

24 ~~———— (15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of
25 any political subdivision of the state."~~

26

27 **Section 4.** Section 15-70-204, MCA, is amended to read:

28 **"15-70-204. (Temporary) Gasoline license tax -- rate.** (1) Each distributor shall pay to the department
29 a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

30 ~~———— (a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center,~~

1 which is allocated to the department as provided by 67-1-301; and
 2 ~~_____ (b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon~~
 3 ~~which the gasoline license tax has not been paid by any other distributor.~~

4 ~~_____ (2) Gasoline exported may not be included in the measure of the distributor's license tax unless the~~
 5 ~~distributor is not licensed and is not paying the tax to the state the fuel is destined for.~~

6 ~~_____ (3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per~~
 7 ~~gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1).~~

8 **15-70-204. (Effective on occurrence of contingency) Gasoline license tax -- rate.** (1) Each
 9 distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in
 10 this state in an amount equal to:

11 (a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center,
 12 which is allocated to the department as provided by 67-1-301; and

13 (b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon
 14 which the gasoline license tax has not been paid by any other distributor.

15 (2) Gasoline exported may not be included in the measure of the distributor's license tax unless the
 16 distributor is not licensed and is not paying the tax to the state the fuel is destined for.

17 (3) Gasohol, as defined in 15-70-201, is subject to 85% of the tax imposed in subsection (1)(b).

18 (4) Beginning January 1 following the date that the requirement for use of gasohol contained in [section
 19 1] occurs, gasohol is subject to the tax imposed in subsection (1)(b). (Terminates June 30 of fourth year
 20 following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.)

21 **15-70-204. (Effective July 1 of fourth year following date of occurrence of contingency) Gasoline**
 22 **license tax -- rate.** (1) Each distributor shall pay to the department a license tax for the privilege of engaging
 23 in and carrying on business in this state in an amount equal to:

24 ~~_____ (a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center,~~
 25 ~~which is allocated to the department as provided by 67-1-301; and~~

26 ~~_____ (b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon~~
 27 ~~which the gasoline license tax has not been paid by any other distributor.~~

28 ~~_____ (2) Gasoline exported may not be included in the measure of the distributor's license tax unless the~~
 29 ~~distributor is not licensed and is not paying the tax to the state the fuel is destined for.~~

30 ~~_____ (3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per~~

1 ~~gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)."~~

2

3 **SECTION 5. SECTION 15-70-503, MCA, IS AMENDED TO READ:**

4 **"15-70-503. Definitions.** As used in this part, the definitions in 15-70-201 and the following definitions
5 apply:

6 (1) "Alcohol distributor" means any person who, for the purpose of making gasohol, engages in the
7 business of producing alcohol for sale, use, or distribution.

8 (2) "Department" means the department of transportation.

9 (3) "Export" means to transport out of Montana from any point of origin within Montana by any means
10 other than in the fuel supply tank of a motor vehicle.

11 (4) "Gasohol" means a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend
12 of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol
13 in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured
14 ethanol and 90% gasoline would be reflected as E-10.

15 ~~(4)(5)~~ "Gasohol dealer" means any person who blends alcohol with gasoline to produce gasohol for
16 sale, use, or distribution in this state."

17

18 **SECTION 6. SECTION 15-70-522, MCA, IS AMENDED TO READ:**

19 **~~"15-70-522. Tax incentive for production of alcohol -- written plan required -- reservation of~~**
20 **~~incentives -- rules.~~** (1) (a) If the alcohol was produced in Montana from Montana agricultural products, including
21 Montana wood or wood products, or if the alcohol was produced from non-Montana agricultural products when
22 Montana products are not available, there is a tax incentive payable to alcohol distributors for distilling alcohol
23 that:

24 (i) is to be blended with gasoline for sale as gasohol in Montana;

25 (ii) was exported from Montana to be blended with gasoline for sale as gasohol; or

26 (iii) is to be used in the production of ethyl butyl ether for use in reformulated gasoline.

27 (b) Payment must be made by the department out of the amount collected under 15-70-204.

28 (2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of alcohol distilled
29 in accordance with subsection (1) is ~~30~~ 20 cents a gallon for each gallon that is 100% produced from Montana
30 products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount

1 of agricultural or wood products not produced in Montana that is used in the production of the alcohol. ~~Beginning~~
2 ~~July 1, 2010, there is no tax incentive.~~ The tax incentive is available to a facility for the first 6 years from the date
3 that the facility begins production. The facility shall file a business plan with the department at least 2 years
4 before the estimated beginning date of production. After the initial business plan is filed, the facility shall provide
5 the department with quarterly updates regarding any changes to the business plan.

6 (3) Regardless of the alcohol tax incentive provided in subsection (2);

7 (a) the total payments made for the incentive under this part may not exceed \$6 million in any
8 consecutive 12-month period;

9 (b) a plant or facility is not eligible to receive the tax incentive unless the facility paid the standard
10 prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction phase;
11 and

12 (c) an alcohol distributor is not eligible to receive the tax incentive unless at least:

13 (i) 20% Montana product is used to produce alcohol at the facility in the first year of production;

14 (ii) 25% Montana product is used to produce alcohol at the facility in the second year of production;

15 (iii) 35% Montana product is used to produce alcohol at the facility in the third year of production;

16 (iv) 45% Montana product is used to produce alcohol at the facility in the fourth year of production;

17 (v) 55% Montana product is used to produce alcohol at the facility in the fifth year of production; and

18 (vi) 65% Montana product is used to produce alcohol at the facility in the sixth year of production.

19 (4) (a) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed
20 \$3 \$2 million in any consecutive 12-month period. Subject to subsections (5) and (6), an alcohol distributor may
21 receive tax incentive payments commencing the first quarter after a facility begins production. The distributor
22 shall report its production to the department pursuant to 15-70-205.

23 (b) The distributor's report must include:

24 (i) the total number of gallons produced for the month;

25 (ii) the total amount of products purchased for the production of alcohol;

26 (iii) the percentage of the total amount of products purchased that are Montana products; and

27 (iv) other information that the department determines is necessary.

28 ~~(5) An alcohol distributor may not receive tax incentive payments under subsection (2) unless the~~
29 ~~distributor has provided a written business plan to the department of transportation at least 24 months before~~
30 ~~the distributor's anticipated collection of the tax incentives and has complied with the schedule provided for in~~

1 subsection (6). The plan must contain the following information:

2 ~~—— (a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the~~
3 ~~production of alcohol for use in gasohol;~~

4 ~~—— (b) the anticipated source of agricultural products used in the production of alcohol for use in gasohol;~~
5 ~~and~~

6 ~~—— (c) the anticipated time, quantity, and duration of production of alcohol for use in gasohol.~~

7 ~~—— (6) An applicant that has provided the department with a written business plan shall meet the following~~
8 ~~schedule to be able to receive alcohol tax incentive payments:~~

9 ~~—— (a) start building construction or remodeling within 24 months of the date on which the department~~
10 ~~received the business plan;~~

11 ~~—— (b) complete 50% of construction or remodeling of a production facility within 36 months of the date on~~
12 ~~which the business plan was received; and~~

13 ~~—— (c) complete 100% of construction or remodeling of a production facility and be in production of alcohol~~
14 ~~for use in gasohol for distribution within 48 months of the date on which the business plan was received.~~

15 ~~—— (7) If the applicant does not adhere to the schedule in subsection (6), the applicant loses its priority for~~
16 ~~receiving incentive payments.~~

17 ~~(8)(5) (a) A plant shall apply for the incentive payment by submitting an application to the department~~
18 ~~when the plant has proof of commitment from lenders to finance the plant. Subject to subsection (5)(b), the~~
19 ~~department shall respond to the applicant with approval of the application within 45 days of receipt of the~~
20 ~~application, after confirming the lending commitment. Upon approval of the application, the department shall~~
21 ~~enter into a contract with the plant that ensures the state's commitment to pay incentive payments to qualifying~~
22 ~~ethanol plants.~~

23 ~~(b) If the department is not able to confirm a lending commitment, the department shall deny the~~
24 ~~application.~~

25 ~~(6) After the department has verified production, the application provisions of subsection (5) are met,~~
26 ~~and the plant owner presents proof of financing, the department shall begin payments of the alcohol tax~~
27 ~~incentives based on actual production according to the terms of subsection subsections (2) and (4).~~

28 ~~(9) The department shall reserve, in the order that written plans required under subsection (5) are~~
29 ~~received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of~~
30 ~~production.~~

1 ~~———— (10) A new tax incentive payment may not be made if the total tax incentive established in subsection~~
 2 ~~(3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which~~
 3 ~~the tax incentive has been reduced or canceled is available for reservation as provided in subsection (9):~~

4 ~~(4)(7) The department shall prescribe rules necessary to carry out the provisions of this section within~~
 5 ~~1 year of [the effective date of this act]. The department shall coordinate and request information and input from~~
 6 ~~the alcohol production industry as a part of the rulemaking process and shall follow the procedures provided in~~
 7 ~~Title 2, chapter 4."~~

8

9 **SECTION 7. SECTION 17-6-317, MCA, IS AMENDED TO READ:**

10 **"17-6-317. Participation by private financial institutions -- rulemaking.** (1) (a) The board may jointly
 11 participate with private financial institutions in making loans to a business enterprise if the loan will:

12 (i) result in the creation of a business estimated to employ at least 10 people in Montana on a
 13 permanent, full-time basis;

14 (ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana
 15 on a permanent, full-time basis; or

16 (iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time
 17 employees of the business.

18 (b) Loans under this section may be made only to business enterprises that are producing or will
 19 produce value-added products or commodities.

20 (c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under
 21 17-6-318.

22 (2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund
 23 and must comply with each of the following requirements:

24 (a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25%
 25 of the total loan amount.

26 (ii) A participating private financial institution may not require the business to have an equity position
 27 greater than 50% of the total loan amount.

28 (iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a
 29 participating private financial institution, then the additional security or guarantees must be proportional to the
 30 amount loaned by all participants, including the board of investments.

- 1 (b) The board shall provide 75% of the total loan amount.
- 2 (c) The term of the loan may not exceed 15 years.
- 3 (d) The board shall charge interest at the following annual rate:
- 4 (i) 2% for the first 5 years if 15 or more jobs are created or retained;
- 5 (ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;
- 6 (iii) 6% for the second 5 years; and
- 7 (iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.
- 8 (e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives
- 9 certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board
- 10 disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted
- 11 rate.
- 12 (ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination
- 13 of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and
- 14 interest rate will in fact prevent the elimination of jobs.
- 15 (f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of
- 16 required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's
- 17 posted rate.
- 18 (g) For purposes of calculating job creation or retention requirements, the board shall use the average
- 19 weekly salary, as defined in 39-71-116, multiplied by the number of jobs required. This calculated number is the
- 20 minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual jobs
- 21 created pay less than the average weekly salary, the borrower shall create more jobs to meet the minimum
- 22 aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i) or (2)(d)(ii)
- 23 but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the reduced
- 24 interest rate. A job paying less than the minimum wage, provided for in 39-3-409, may not be included in the
- 25 required number of jobs.
- 26 (h) (i) A participating private financial institution may charge interest in an amount equal to the national
- 27 prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater
- 28 than 12%.
- 29 (ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to
- 30 an adjustable or fixed rate on terms acceptable to the borrower and lender.

1 (iii) A participating private financial institution, or lead private financial institution if more than one is
2 participating, may charge a 0.5% annual service fee.

3 (i) The business enterprise may not be charged a loan prepayment penalty.

4 (j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation
5 provisions based upon the loan percentage of the board and each participating private lender.

6 (3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion
7 of the loan must be made based upon the percentage of completion to ensure that the construction portion of
8 the loan is advanced prior to completion of the project.

9 (4) A private financial institution shall participate in a loan made pursuant to this section to the extent
10 of 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan
11 must be 75% of the loan amount.

12 (5) (a) A ~~Except as provided in subsection (5)(b), a~~ business enterprise receiving a loan under the
13 provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except
14 that incentives may be paid to employees for achieving performance standards or goals.

15 (b) A business enterprise for the production of alcohol to be used as provided in Title 15, chapter 70,
16 part 5, may pay dividends to investors and bonuses to employees if the business enterprise is current on its loan
17 payments and has available funds equal to at least 15% of the outstanding principal balance of the loan.

18 (6) The board may adopt rules that it considers necessary to implement this section."
19

20 **SECTION 8. SECTION 82-15-101, MCA, IS AMENDED TO READ:**

21 **"82-15-101. Definitions.** As used in this part, the following definitions apply:

22 (1) "Antiknock index number" means the octane rating of the antiknock characteristics of a grade or type
23 of motor fuel determined as provided in 16 CFR 306.0.

24 ~~(1)(2)~~ (2) "Dealer" means any person engaged in the petroleum business and includes petroleum dealers
25 and liquefied petroleum dealers.

26 ~~(2)(3)~~ (3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part
27 17.

28 ~~(3)(4)~~ (4) "Liquefied petroleum dealer" means a dealer engaged, directly or indirectly, in the business of
29 delivering or distributing to a consumer or of selling or offering or advertising for sale or refining or manufacturing
30 or keeping for sale in this state any petroleum product composed predominately of any of the following

1 hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and
 2 butylenes but excluding prepackaged liquefied petroleum products.

3 ~~(4)~~(5) "Liquefied petroleum product" means a product composed predominately of any of the following
 4 hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and
 5 butylenes.

6 ~~(5)~~(6) "Liquefied petroleum product container" means a container approved by the American society
 7 of mechanical engineers that can hold 110 gallons or more of a liquefied petroleum product.

8 ~~(6)~~(7) "Mislabeled" means a package label or dispensing device of a product that bears any statement,
 9 design, or device regarding the product or regarding ingredients or substances in the product or regarding the
 10 properties, quality, or kind of products that is false or misleading in any manner.

11 ~~(7)~~(8) "Owner" means a person:

12 (a) who is listed with the American society of mechanical engineers or with the manufacturer as owner
 13 by the serial number of the liquefied petroleum product container;

14 (b) who holds a written bill of sale or other instrument under which title to a liquefied petroleum product
 15 container was transferred; or

16 (c) who holds a paid invoice showing purchase of and payment for a liquefied petroleum product
 17 container.

18 ~~(8)~~(9) "Person" means an individual, trust, estate, partnership, corporation, joint-stock company, firm,
 19 agency, association, or any receiver appointed by law.

20 ~~(9)~~(10) "Petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering
 21 or distributing to a consumer or offering or advertising for sale, refining, manufacturing, or keeping for sale in
 22 this state any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, or greases or any oil or gas or oil and
 23 gas product except prepackaged petroleum products and except as otherwise defined as a liquefied petroleum
 24 dealer in subsection ~~(3)~~ (4).

25 ~~(10)~~(11) "Sell" and "sale" includes barter and exchange."
 26

27 **Section 9.** Section 82-15-102, MCA, is amended to read:

28 **"82-15-102. Enforcement of part -- rules.** (1) ~~This~~ Except as provided in subsection (2), this part shall
 29 must be enforced by the department. It may adopt necessary and reasonable rules for the implementation of
 30 the provisions and intent of this part, and those rules have the effect of law.

1 (2) Section 82-15-110(8) must be enforced by the department of environmental quality.

2 (3) The board of environmental review shall adopt rules for the regulation of methyl tertiary butyl ether
3 in accordance with this part. The rules must establish:

4 (a) a trace level or trace levels of methyl tertiary butyl ether that may be contained in gasoline that is
5 imported into the state, stored, distributed, sold, offered or exposed for sale, or dispensed. The board shall
6 establish trace levels in a manner that prevents the intentional addition of methyl tertiary butyl ether to gasoline
7 but that allows for a residual amount of methyl tertiary butyl ether to remain in tanks following implementation
8 of 82-15-110(8).

9 (b) reasonable sampling and reporting requirements; and

10 (c) requirements that the board determines are reasonable and necessary for implementation of the
11 portions of this part that apply to methyl tertiary butyl ether."

12

13 **Section 10.** Section 82-15-103, MCA, is amended to read:

14 **"82-15-103. Standards for petroleum products.** The standards and specifications for petroleum
15 products, including but not limited to gasoline, ethanol-blended gasoline, fuel oils, diesel fuel, kerosene, and
16 liquefied petroleum gases, ~~shall~~ must be determined by the department and, subject to the provisions of [section
17 1(1)], shall must be based upon nationally recognized standards and specifications such as those that are
18 published from time to time by the American society for testing materials. ~~When so determined by the~~ The
19 standards and specifications adopted by rule by the department ~~and adopted as rules, such standards and~~
20 ~~specifications~~ are the standards and specifications for ~~such~~ those products sold in this state and official tests
21 of ~~such~~ those products ~~shall~~ must be based upon ~~them~~ the adopted standards and specifications."

22

23 **Section 11.** Section 82-15-104, MCA, is amended to read:

24 **"82-15-104. ~~Department~~ Departments authorized to employ laboratory for testing.** The department
25 and, when testing for methyl tertiary butyl ether, the department of environmental quality may employ a
26 laboratory ~~having that has~~ that has sufficient facilities to make tests of petroleum products as required and may pay
27 reasonable compensation for the analyses and tests made by it the laboratory."

28

29 **Section 12.** Section 82-15-106, MCA, is amended to read:

30 **"82-15-106. Refusing, suspending, and revoking licenses -- hearing required.** The department may

1 refuse to grant a license or may suspend or revoke a license already granted for due cause after a hearing
 2 noticed for which notice was provided for not less than 10 days. Violation of any provision of this part, except
 3 82-15-110(8), or any lawful order or rule of the department is cause for which the department may suspend,
 4 revoke, or refuse to issue a license. The suspension, revocation, or refusal may be conditioned on ~~these~~ terms
 5 which that the department considers ~~just and proper~~ appropriate."

6

7 **Section 13.** Section 82-15-110, MCA, is amended to read:

8 **"82-15-110. Unlawful acts.** It is unlawful to:

9 (1) use any meter or mechanical device for the measurement of gasoline or liquid fuels unless the ~~same~~
 10 the meter or mechanical device has been approved by the department and sealed as correct;

11 (2) change or in any way tamper with the department's seal without written consent from the
 12 department;

13 (3) make hose delivery from petroleum vehicle tanks unless the tanks have been calibrated by the
 14 department under 82-15-108;

15 (4) sell or deliver liquefied petroleum to a consumer as a liquid or vapor except as provided by
 16 82-15-109;

17 (5) sell or offer for sale or deliver liquefied petroleum to a consumer as a liquid or vapor the
 18 measurement of which has not been temperature corrected to 60 degrees F by means of an automatic
 19 compensating device ~~which that~~ has been approved, calibrated, and sealed by the department, unless otherwise
 20 provided by the department;

21 (6) sell, offer, or expose for sale any petroleum product for which standards or minimum specifications
 22 have been set by the department unless the ~~commodities~~ fuel product meets in all respects ~~meet~~
 23 standards prescribed;

24 (7) sell, offer, or expose for sale any petroleum product ~~which that~~ is adulterated, mislabeled, or
 25 misrepresented with respect to the use for which it is reasonably intended; or

26 (8) import into the state, store, distribute, sell, offer or expose for sale, or dispense any gasoline that
 27 contains methyl tertiary butyl ether in amounts that exceed the trace level or levels allowed by the rules adopted
 28 pursuant to 82-15-102(3)(a)."

29

30 **NEW SECTION. SECTION 14. DEPARTMENT OF ENVIRONMENTAL QUALITY TO ENFORCE PROHIBITION ON**

1 METHYL TERTIARY BUTYL ETHER -- NOTICE REQUIREMENTS -- HEARING -- PENALTIES. (1) (A) WHENEVER THE DEPARTMENT
2 OF ENVIRONMENTAL QUALITY BELIEVES THAT A VIOLATION OF 82-15-110(8) OR OF THE RULES ADOPTED PURSUANT TO
3 82-15-102(3) HAS OCCURRED, IT MAY SERVE WRITTEN NOTICE OF THE VIOLATION ON THE ALLEGED VIOLATOR OR AN
4 AGENT OF THE ALLEGED VIOLATOR.

5 (B) THE NOTICE MUST SPECIFY THE FACTS ALLEGED TO CONSTITUTE A VIOLATION AND MAY INCLUDE AN ORDER
6 ASSESSING AN ADMINISTRATIVE PENALTY PURSUANT TO SUBSECTION (3), AN ORDER TO TAKE NECESSARY CORRECTIVE
7 ACTION WITHIN A REASONABLE PERIOD OF TIME STATED IN THE ORDER, OR BOTH.

8 (C) THE ORDER BECOMES FINAL UNLESS, WITHIN 30 DAYS AFTER THE NOTICE IS SERVED, THE PERSON NAMED
9 IN THE ORDER REQUESTS IN WRITING A HEARING BEFORE THE BOARD OF ENVIRONMENTAL REVIEW. SERVICE BY MAIL IS
10 COMPLETE ON THE DATE OF MAILING.

11 (D) UPON RECEIPT OF THE REQUEST, THE BOARD OF ENVIRONMENTAL REVIEW SHALL SCHEDULE A HEARING.
12 THE CONTESTED CASE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT PROVIDED IN TITLE 2, CHAPTER
13 4, PART 6, APPLY TO A HEARING CONDUCTED UNDER THIS SECTION.

14 (2) IF, AFTER A HEARING HELD UNDER SUBSECTION (1), THE BOARD OF ENVIRONMENTAL REVIEW FINDS THAT A
15 VIOLATION HAS OCCURRED, IT SHALL EITHER AFFIRM OR MODIFY THE ORDER OF THE DEPARTMENT OF ENVIRONMENTAL
16 QUALITY. AN ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR BY THE BOARD OF ENVIRONMENTAL
17 REVIEW MAY PRESCRIBE THE DATE BY WHICH THE VIOLATION MUST CEASE AND MAY PRESCRIBE TIME LIMITS FOR A
18 PARTICULAR ACTION. IF, AFTER HEARING, THE BOARD OF ENVIRONMENTAL REVIEW FINDS NO VIOLATION HAS OCCURRED,
19 IT SHALL RESCIND THE ORDER OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

20 (3) A VIOLATION OF 82-15-110(8) OR OF A RULE ADOPTED PURSUANT TO 82-15-102(3) IS SUBJECT TO AN
21 ADMINISTRATIVE PENALTY OF UP TO \$1,000. EACH DAY OF VIOLATION CONSTITUTES A SEPARATE VIOLATION.

22 (4) ANY PERSON WHO VIOLATES 82-15-110(8), A RULE ADOPTED PURSUANT TO 82-15-102(3), OR AN ORDER
23 ISSUED UNDER THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT TO EXCEED \$5,000 FOR EACH VIOLATION. EACH DAY
24 OF VIOLATION CONSTITUTES A SEPARATE VIOLATION.

25 (5) THE DEPARTMENT OF ENVIRONMENTAL QUALITY IS AUTHORIZED TO COMMENCE A CIVIL ACTION SEEKING
26 APPROPRIATE RELIEF, INCLUDING TEMPORARY AND PERMANENT INJUNCTIONS AND PENALTIES UNDER SUBSECTION (4)
27 OF THIS SECTION, FOR A VIOLATION OF 82-15-110(8), A RULE ADOPTED PURSUANT TO 82-15-102(3), OR A VIOLATION
28 OF AN ORDER ISSUED UNDER THIS SECTION. THE ACTION MUST BE BROUGHT IN THE DISTRICT COURT OF THE FIRST
29 JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY, OR IN THE DISTRICT COURT OF THE COUNTY IN WHICH THE VIOLATION
30 OCCURRED.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

SECTION 15. SECTION 82-15-111, MCA, IS AMENDED TO READ:

"82-15-111. Penalty for violations. A person who purposely, knowingly, or negligently violates any of the provisions of this part, except 82-15-110(8), or any rule promulgated by the department is guilty of a misdemeanor and upon conviction shall for the first offense be punished by a fine of not less than \$10 or more than \$1,000 and shall be punished for any subsequent offense by a fine of not less than \$50 or more than \$5,000, by imprisonment in the county jail for a term not exceeding 1 year, or by both fine and imprisonment."

SECTION 16. SECTION 12, CHAPTER 568, LAWS OF 2001, IS AMENDED TO READ:

"Section 12. Contingent effective date. ~~[This act]~~ [Sections 5 through 10] are effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

- (1) an ethanol plant is operational and producing fuel in Montana; and
- (2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least \$20 million on June 30 following the date on which the condition in subsection (1) is complied with."

SECTION 17. SECTION 13, CHAPTER 568, LAWS OF 2001, IS AMENDED TO READ:

"Section 13. Contingent termination. ~~[This act]~~ terminates [Sections 5 through 10] terminate June 30 of the fourth year following [the effective date of this act]."

NEW SECTION. SECTION 18. REPEALER. SECTION 15-70-245, MCA, IS REPEALED.

NEW SECTION. Section 19. Codification instruction. [Sections 1 ~~and~~, 2, AND 14] are intended to be codified as an integral part of Title 82, chapter 15, part 1, and the provisions of Title 82, chapter 15, part 1, apply to [sections 1 ~~and~~, 2, AND 14].

~~**NEW SECTION. Section 10. Repealer.** Section 13, Chapter 568, Laws of 2001, is repealed.~~

NEW SECTION. Section 20. Effective date. [This act] is effective on passage and approval.

1
2 NEW SECTION. SECTION 21. CONTINGENT TERMINATION. (1) SUBJECT TO SUBSECTION (2), [SECTIONS 1 AND
3 2] AND THE AMENDMENTS TO 15-70-204 TERMINATE 5 YEARS AFTER THE PRODUCTION LEVEL PROVIDED FOR IN [SECTION
4 1] IS MET.

5 (2) IF, AFTER THE ~~55-MILLION-GALLON~~ 40-MILLION-GALLON PRODUCTION REQUIREMENT OF [SECTION 1] IS MET,
6 THE PRODUCTION OF DENATURED ETHANOL IN MONTANA FALLS BELOW ~~30~~ 20 MILLION GALLONS ON AN ANNUALIZED BASIS,
7 [SECTIONS 1 AND 2] AND THE AMENDMENTS TO 15-70-204 ARE TERMINATED.

8 (3) THE DEPARTMENT OF TRANSPORTATION SHALL INFORM THE CODE COMMISSIONER OF THE DATE THAT THE
9 PRODUCTION LEVEL PROVIDED FOR IN [SECTION 1] IS MET.

10 (4) THE DEPARTMENT OF TRANSPORTATION SHALL INFORM THE CODE COMMISSIONER IF PRODUCTION OF
11 DENATURED ETHANOL IN MONTANA FALLS BELOW ~~30~~ 20 MILLION GALLONS ON AN ANNUALIZED BASIS ONCE THE
12 PRODUCTION REQUIREMENT OF ~~55~~ 40 MILLION GALLONS PROVIDED FOR IN [SECTION 1] HAS BEEN MET.

13 - END -